

People as Partners Project



MAKING SENSE OF SDS A SERIES OF GUIDES FOR PROVIDERS

Guide 5: The four SDS options and the provider's role

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Making Sense of SDS

A series of guides for providers

This guide is part of a series which is designed to introduce providers of older people's care and support services to the Social Care (Self-directed support) (Scotland) 2013 Act which came into effect on 1 April 2014.

This particular guide will explore the four options which are envisaged as the main mechanisms by which an individual is enabled to choose how their support might be delivered to them. The communication of these choices, their distinctiveness and their delivery will be central to the aims of the Act and its accompanying Statutory Guidance.

Each of the options will be discussed and examined in turn through illustrating what they may mean for providers. However, before we go on to examine them in turn it will be useful to place them into a wider context.

What does the Act and Guidance say about the four options?

After an individual has undergone a formal assessment which has helped them identify their outcomes, they will then be offered four options to consider as a means of providing the support needed to address their needs. Everyone who meets the local eligibility criteria must be offered the four options, unless they are entering residential care where they will not be offered option 1. However, the Scottish Government intends to establish some test sites in autumn 2014 to explore the use of all four options in residential care settings. Scottish Care has already indicated in our submissions in respect of the Draft Guidance that we consider the limiting of the fullest range of choice, including direct payments, to those who are considered as requiring residential care to be discriminatory in nature.¹

The four options must be offered to the individual in writing, as well as in person, with an indication of an indicative budget which it has been determined will be made available for the individual to use in their support planning process to select the means by which their outcomes will be achieved.

What are the four options?

These are described in the Statutory Guidance in the following terms:

'The 2013 Act imposes a new duty on the authority to provide 4 options to all adults, children and carers eligible for support or provided with services. The options are intended to support the flexibility and creativity allowed under the social welfare and wellbeing duties relating to both adults and children.'

¹ See Scottish Care's submission

The four options are:

Option 1, a direct payment: *the definition of the direct payment remains unchanged from its previous incarnation under Section 12B of the 1968 Act²*

Option 2, directing the available support: *this option should provide greater transparency and control for the supported person without the requirement to take this support as a direct payment. There is a degree of discretion for the local authority in how it can develop and deliver this option. However the authority should take steps to ensure that Option 2 differs in nature from both Option 1 (the direct payment) and Option 3 (arranged services).*

Option 3, services arranged for the person by the authority: *this is where the authority arranges any services on the person's behalf.*

Option 4, a mix of the first 3 options *for different aspects of the person's support.*

(Statutory Guidance section 2.17)

Elsewhere the Guidance speaks of the importance of ensuring that individuals understand what the four options mean for them and their differences. This will be a particular challenge for social workers. It will also be important that providers ensure that local authority practitioners properly understand the nature of their services so that when individuals are exercising their choice of options they are as fully informed as possible.

The Guidance states:

All of the choices must be described to the supported person. A key challenge for the authority is how to relate the options to the supported person and how to make them come alive to the supported person. Information and support services and the relevant legal duties on information, support and advocacy play a vital role at this state.'
(Statutory Guidance section 8.2)

Practitioners have a responsibility to ensure the supported person is fully informed of the opportunities, responsibilities and consequences of selecting each of the options. This will involve issues regarding capacity and communication, e.g. a supported person might require translation, specialist communication or indeed advocacy services to fully understand the relevance of specific options for them as an individual.

Option 1 – Direct Payments

Many providers will have already significant experience of supporting individuals who use a direct payment to purchase their support and care from them. Choosing a direct payment means that in the majority of instances a supported individual directly manages the budget they are allocated. In addition, there are many individuals who have their budget managed by a family member or support organisation.

² See <http://www.legislation.gov.uk/ukpga/1968/49/section/12B>

The Statutory Guidance makes it clear that the direct payment route offers distinctive advantages and that these need to be properly understood when one is chosen:

'There are certain key points that the authority should take account of when providing the direct payment option:

The authority should be aware of and be able to explain the key characteristics of a direct payment. For instance, under a direct payment the supported person - or an organisation or person identified by the authority (under a third party direct payment) - receives a sum of money into a bank account. The supported person, either on their own or with support, can then purchase the support that they wish in order to meet their personal outcomes.

The authority should ensure that the relevant local guidance or procedures work to assist the person to use the available financial resource in a variety of ways. In other words, to use it in any way provided that it will secure the provision of support agreed with the professional and provided that it meets the outcomes contained in the support plan.

The decision to become an employer will only be available under the direct payment option. However, the authority should make it clear that the supported person can also use their direct payment to purchase a range of services that might otherwise be available under Options 2 to 4. For example, a direct payment can be used to purchase services from a registered care provider, from the local authority itself or from another local authority. In other words the direct payment is not only a route to employing personal assistants.' (Statutory Guidance section 8.4)

Research shows that often one of the primary reasons why individuals choose to take a direct payment is because existing service provision is not meeting their particular needs or providers are felt to be too inflexible in their service offer. For instance, support workers come at times that don't suit the individual or there is inconsistency in who is meeting their needs with a lack of continuity in support. In such instances many feel that taking more direct control will get them a better service provision. Obviously there is a challenge here for providers. How do you personalise your services so that individuals feel their care support is built around what they want and need and not the other way around? Against this organisations need to balance the challenge of recruiting staff who can be flexible and responsive against ensuring that everyone is equitably supported, especially at peak times of the day. As self-directed support develops providers will need to examine their offer to ensure it mirrors the required flexibility and person centeredness that individuals rightly aspire for and require.

Many people use direct payments to employ a carer (called a Personal Assistant) directly. Others use it to buy services from a care provider organisation, for instance in buying short breaks or respite care, buying equipment or adaptations for their home or helping them to attend activities, such as going to a social club or interest group.

Although a lot of stress on direct payments has traditionally been put on its use to employ Personal Assistants it should be emphasised that many use direct payments to purchase services or additional supports rather than directly employing someone. In this regard it is important for providers to consider whether they would wish to be involved in such arrangements, what systems of support they have in terms of evidencing fiscal and care compliance and the extent to which their services are sufficiently flexible to meet such arrangements.

'Typically, direct payments have been understood as a route to employing a personal assistant. However, a direct payment can also be used to purchase a very wide range of things. For instance:

- *a service from the local authority or from another local authority;*
- *a service from a provider organisation in either the voluntary or private sector;*
- *a product which can help to meet the supported person's needs;*
- *a short break or respite of one sort or another; and anything else which will help to meet the supported person's needs and the outcomes in the support plan.'*

(Statutory Guidance section 8.13)

Restrictions:

At the present moment in time there are a number of individuals who are unable to access a direct payment. The main category is that direct payments cannot be used by those in residential care and those who are considering or have been assessed as requiring residential care with nursing.

However, it is important to note that restrictions on who may or may not get a direct payment are aimed to be as limited as possible so that choice can be maximised. However there are some worthy of note, so for instance:

- *'If a person is formally assessed as 'lacking capacity' under the AWI Act, then they will only be suitable for a Direct Payment, after being assessed and found to be eligible, if they have a formal legal guardian who is able to speak for them.*
- *If a person doesn't lack capacity in the legal sense (under the AWI Act) but needs significant assistance to make and manage decisions, then the local authority has a duty to support them in this decision making and to assist them with the management of their decision thereafter. This 'management' may be provided directly by a third party, depending upon the option chosen.'* (Practitioners Guidance)

The question often raised regarding employment of Personal Assistants is whether or not it is acceptable and allowable for a family member to be employed as a Personal Assistant. In this regard there has been a subtle change in the regulations. Previously direct payments could not be used to employ a close relative except in *exceptional circumstances* accepted by the local authority. This condition is being relaxed in the Act to *'appropriate circumstances.'* This again is at the discretion of the local authority. A close relative in this context is a parent, child, brother or sister, aunt or uncle, nephew or niece, cousin, grandparent, grandchild. Also, the spouse or civil

partner of any person listed, or a person who lives with any person listed above as if their spouse or civil partner

There are clearly circumstances where the employment of a family member is necessary and helpful, e.g. where there are no other options regarding service provision because of rurality and isolation; where there are unique communication needs; on cultural, ethnic and religious grounds; where the family members is available at times when other service options are not; the intimate nature of the support makes it preferable for a family member to be engaged; where there are palliative and end of life considerations, or indeed where in the mind of the local authority the family member is the best person to offer such care and support as required by the supported person.

However, most practitioners recognise that there is often an unhelpful confusion between the role an individual plays as a family member and that of being employed directly by the supported person. In addition, in such instances other family members may withdraw or hold back from caring roles because they are not being paid.

It should also be noted, as indicated above, that the family member will not be employed if they are the one managing the payment because they have guardianship or power of attorney. In addition, as with a general support plan the local authority can refuse such an arrangement if the person is likely to have been unduly influenced, is placed in a position of risk or if the arrangements fail to meet a person's identified needs and outcomes.

Option 2 - Directing the available support

Option 2 is the most significant change in the Act and offers real potential for individuals to manage their support in a more flexible manner. It is a given that not everyone will want to receive a direct payment but many people will still want the freedom to choose who provides their support.

If an individual chooses option 2 they do not have to directly deal with the budget and money but rather the local authority will pay the money to one or more organisations that they have chosen. The aim of this option is to maximise the amount of choice and control an individual has without having to directly manage the budget for that support. As the Guidance states:

'The purpose of Option 2 is to facilitate greater choice and control, making it easier for people to choose the provider of their choice, with the authority (or subsequently the provider) the servant of the support person, making arrangements on their behalf.

The authority should use Option 2 to widen the flexibility offered to supported persons to the maximum possible extent. It should make use of Option 2 to provide a route to greater choice and control for those who want to take greater control over their day-to-day support but are not willing or do not feel ready or able, to choose the direct

payment option. The authority should take as flexible an approach as possible to Option 2, ensuring that it is delivered in line with the policy aims which underpin Section 1 and 4 within the 2013 Act.’ (Statutory Guidance section 8.21)

Option 2 is often used to enable an Individual Service Fund

‘Option 2 may be provided as an Individual Service Fund. An Individual Service Fund is a sum of money managed by a service provider on behalf of an individual. As with a direct payment, the funding should be used to meet the needs identified at assessment and the personal outcomes outlined in the support plan. It can include services purchased from other providers.’ (Statutory Guidance section 8.23)

It is clearly important that local authorities ensure that this aim is achieved by ensuring that commissioning and contractual arrangements maximise choice rather than act as barriers to the supported person’s ability to exercise choice by selecting the provider they may wish to receive their support from:

‘The authority should not seek to limit flexibility beyond what is allowed under procurement law. The key limitation is that a person cannot use Option 2 in order to employ their own staff. Unlike the direct payment there is no requirement for the funding to be provided directly to the supported person as a cash payment. The budget provided to the person should be operated as a virtual budget. The resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the supported person’s direction.’ (Statutory Guidance section 8.23)

There is justifiable concern that some of the early practices relating to Option 2 at local authority level are serving to limit choice by being too deterministic and contractual in nature. This is to fly against the spirit and the letter of both the Act and the Guidance. The Guidance clearly states:

‘The authority’s arrangements may be operated as a formal framework agreement or other similar arrangements, though there is no requirement to do so within the 2013 Act, nor detailed restrictions imposed on the local authority as to how flexible and creative it wishes to be in relation to Option 2.

The arrangements should be flexible and inclusive. Flexible - in that they should not seek to create or re-impose barriers to choice and control. Inclusive - in that they should not seek to exclude particular types of service provision or particular providers from the full range of supports available to the person. For example, the arrangements should allow for flexibility in budgeting, allowing sufficient over-and under-spends within the individual’s package of support.

The authority – and providers acting as custodians of the person’s budget under the person’s direction - should not seek to impose restrictions or limitations over and above any that are reasonably defined in the person’s assessment or support plan.’ (Statutory Guidance section 8.24)

It is very important, therefore, that there is a clear delineation between services and supports which might be available under Option 2 and those available Option 3:

‘As stated in Section 8 of this guidance arrangements under Option 2 should be constructed in order to maximise the degree of choice, control and flexibility available to the supported person. This is because Option 2 arrangements are intended to provide additional choice and control beyond what would ordinarily be available under Option 3 (arranged services).’ (Statutory Guidance section 11.39)

and:

‘In developing its strategic plans for Option 2 the authority should take active steps to set up arrangements which clearly separate and distinguish Option 2 arrangements from the arrangement and provision of service by the authority either from within their own services or by arranging for bulk contracts with providers (i.e. Option 3 in the 2013 Act).’ (Statutory Guidance section 11.41)

It is important in all arrangements for Option 2 that the principles are able to underpin all practice. So, for instance, the negotiation of contractual terms is not the sole remit of the local authority but in the spirit of the principles of collaboration and involvement should include the supported person and the provider, thus:

‘It should ensure that the primary objectives for self-directed support – such as independent living and the personal outcomes approach – set the tone for their Option 2 arrangements and determine the way that they develop and deliver their approach to Individual Service Funds and other similar approaches. For example, the supported person should be involved in determining the specific agreement that is reached with the provider and the council, setting out how their support will be delivered and the key personal outcomes that will be supported by the arrangement. The person should be provided with clear, straightforward summaries of any three-way agreements underpinning the on-going management of their Option 2 arrangements. The supported person should be provided with the additional support and information that they need in order to actively manage their budget and support.’

(Statutory Guidance section 11.40)

At the heart of Option 2 is the enhanced control an individual has in relation to their support. It is for them to direct that support and this can only be achieved if they are provided with information to understand their choices, guidance in terms of the management of the budget and support to be aware of the relative costings of different elements of their support plan, all of which will enable their identified outcomes to be achieved.

‘The authority should take steps to ensure that the adult, child or guardian/attorney is supported to take the lead and to be in control of their support under the Option 2 arrangements. It should be the person and not the provider or authority who should be

seen as the commissioner of their own support. The arrangements should be designed and operated in such a way as to give the supported person greater control over their support compared to Option 3 under the 2013 Act and a practical means by which to exercise this control. The arrangements should make it straightforward for the supported person to exercise control over their support, to secure their preferred support and to make adjustments to their support quickly and efficiently.'

(Statutory Guidance section 11.45)

This can all only be achieved if collaboration means an active engagement and involvement with providers, from the local authority:

'The authority, working in partnership with providers in their area, should take practical steps to ensure that the supported person is provided with the right level of additional support and information as early as possible and throughout the provision of support plan under the Option 2 arrangements. The authority should consider the range of information and support services along with additional training, awareness raising and support that will need to be available in their local area in order to support the Option 2 arrangements and to assist people to manage their support in this way. In addition the authority may wish to consider the appropriate integrated budgeting and planning systems and software to ensure that the person can access their virtual budget and that they can know how and in what ways they are spending that budget.'

(Statutory Guidance section 11.46)

Providers will need to consider what might be expected of them in terms of managing the disparate parts of a supported individual's support. There may be a number of providers involved in offering supports under Option 2. Some local authorities have requested the main provider to take over the management of such services. This is not without challenge and may not be what an individual provider desires. It is therefore important that providers are clear about the level and boundaries of their responsibility for each support plan they enter, especially if there are distinct contract terms.

In addition, some organisations offering advice and support will have a system of brokers. A broker is a person whose job it is to provide an individual with advice and information about providers and the types of support which are available in an area.

There are also organisations which may manage the disparate elements of a support package for an individual. This will be separately costed but providers need to be aware of their relationship with and responsibility to such agencies.

It is important to note that if there are challenges relating to an individual's capacity and if it is deemed that a person cannot choose Option 2 or manage their support under Option 2, even with additional support, the local authority retains its duty to provide services under Option 3.

Option 3 - Services arranged for the person by the authority

Option 3 is variously described as traditional service provision or local authority arranged services. These terms describe what for many is the status quo and the way in which social care services have traditionally been delivered:

'Under Option 3 the authority in collaboration with the supported person selects the appropriate support and then makes arrangements on the supported person's behalf. In contrast to Option 2, the supported person steps back somewhat. The person actively chooses to leave many of the detailed decisions to the authority. This may be described as arranged service provision or direct services. It differs from Option 2 in that the local authority provides or arranges services on the supported person's behalf. The supported person does not have direct, on-going or day-to-day responsibility for planning and controlling how the available resource is used.'

(Statutory Guidance section 8.26)

For many individuals requiring support asking the local authority to manage and range that support will be the most appropriate route. Many providers will be familiar with tender and framework arrangements which enable the local authority to identify a list of preferred providers who have met particular criteria set by the local authority. Option 2 enables individuals to select providers who are not on the local authority list.

However, it would be wrong to assume that by taking Option 3 that an individual was accepting former practice. By selecting Option 3 the individual is still required to be able to exercise control and choice over their support – only to a lesser extent. The local authority must still work with the individual to find support that is right for them and the individual must be content with the arrangements made. Under this option the local authority will have responsibility for identifying and commissioning (or providing) appropriate support and making payment of the relevant amount to the identified provider/service. The Statutory Principles must still be evidenced in the working out of Option 3 for a supported person:

'Nevertheless under Option 3 the principles of choice and control, collaboration and involvement should continue to apply. The authority, through its approach to commissioning and procurement of services, should seek to ensure that the services provided are as flexible as possible, are sufficiently personalised and are ready to adapt to the desires of the individuals who use them. This should involve the necessary workforce education and development, ensuring that those who provide care and support do so in line with the general principles in the 2013 Act.'

(Statutory Guidance section 8.27)

Providers who offer services under Option 3 need to ensure that the same degree of flexibility, choice, control and collaboration is evident in their relationship with the supported person as in any of the other options.

Option 4 – A mix of the 3 options

In many senses the use of Option 4 is potentially the most creative of all the three options. Not everyone might be confident in managing a direct payment either themselves or through a third party. Not everyone will want to hand over the management of their budget and/or support to a provider even if there are more than one of these identified in their support plan. Not everyone will be satisfied with the provision from their local authority. For such individuals the option exists of combining some or all of these in developing a support package to suit their needs and circumstances.

'Option 4 - a combination of two or more of the options - recognises that some people will be content to take on some but not all of the control associated with one or other of the self-directed options. This is a mix and match approach to ensure maximum flexibility in the options available. This option may be attractive to people who would like to experiment with the direct payment or individual service fund for a small aspect of their support or for a small portion of their outcomes.'

(Statutory Guidance section 8.28)

This option may be a useful choice for someone wishing to have a taste of managing a budget e.g. an older adult who is at a stage of life when they feel the need for more supports in their home environment but who may wish to have an opportunity to direct a small part of their budget, whilst being supported by more traditional supports through option 2.

Whatever option is selected, there is a real opportunity for both care home and home care providers to be more fully engaged and involved in the delivery of support services. This in itself presents a challenge.

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